

**Iowa Department of Natural Resources  
Environmental Protection Commission**

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**ITEM**

**9**

**DECISION**

**TOPIC**

**Notice of Intended Action – Chapter 113.2(8) “Sanitary Landfills for  
Municipal Solid Waste: Groundwater Protection Systems for  
the Disposal of Non-Hazardous Wastes”**

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Attached for the Commission’s approval is a Notice of Intended Action to amend subrule 113.2(8) of 567-Chapter 113 “Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Non-Hazardous Wastes.”

This amendment is being proposed to address public comments and an objection placed upon this subrule by the Administrative Rules Review Committee pursuant to Iowa Code section 17A.4(5) on December 11, 2007. The Administrative Rules Review Committee determined that subrule 113.2(8) is unreasonable and stated “These members are concerned that subrule 113.2(8) constitutes an improper regulatory taking.” The legal effect of this objection is to shift the burden of proof to the Department in any legal challenge to the subrule. Such legal challenge has been filed. The amendment is intended to allow municipal solid waste landfills to continue to use previously approved landfill cells which have a basal liner and leachate collection system until those cells have been filled.

The amendment is also intended to address questions that have arisen in regard to the current closure requirements for sites that were closed pursuant to the previous rule requirements.

The Commission is requested to approve the attached Notice of Intended Action.

Alex Moon, Environmental Program Supervisor  
Land Quality Bureau  
Environmental Services Division

April 17, 2008

## **ENVIRONMENTAL PROTECTION COMMISSION**

### **Notice of Intended Action**

Pursuant to the authority of Iowa Code sections 455B.304, the Environmental Protection Commission hereby gives Notice of Intended Action to amend subrule 113.2(8) of Chapter 113, “Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Non-Hazardous Wastes,” Iowa Administrative Code.

This amendment is being proposed to address public comments and an objection placed upon this subrule by the Administrative Rules Review Committee pursuant to Iowa Code section 17A.4(5) on December 11, 2007. The Administrative Rules Review Committee determined that subrule 113.2(8) is unreasonable and stated “These members are concerned that subrule 113.2(8) constitutes an improper regulatory taking.” The legal effect of this objection is to shift the burden of proof to the Department in any legal challenge to the subrule. Such legal challenge has been filed. The amendment is intended to allow municipal solid waste landfills to continue to use previously approved landfill cells which have a basal liner and leachate collection system until those cells have been filled.

The amendment is also intended to address questions that have arisen in regard to the current closure requirements for sites that were closed pursuant to the previous rule requirements.

Any interested person may make written suggestions or comments pertaining to the proposed amendments on or before 4:30 p.m. on July 10, 2008. Such written materials should be directed to Alex Moon, Land Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Wallace State Office Building, Des Moines, IA 50319-0034; fax (515)281-8646 or

alex.moon@dnr.iowa.gov. Persons wishing to convey their views orally should contact Alex Moon at (515)281-6807.

When submitting comments, the Department encourages stakeholders to utilize the following guidelines. These guidelines aid the Department in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments on behalf of a business, organization or as an individual.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language to improve the specific rule(s) and explain why.

A public hearing will be held on July 10, 2008, at 12:00 p.m. in the Fifth Floor Conference Rooms of the Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources to advise of special needs.

These amendments are intended to implement Iowa Code section 455B.304.

The following amendment is proposed:

**ITEM 1. Amend 567 IAC 113.2(8) as follows:**

**567--113.2(8) (455B) Closure of existing MSWLF units.**

a. Existing MSWLF units that cannot make the demonstration specified in paragraph 113.6(2)“a,” pertaining to airports, in 113.6(2)“b,” pertaining to floodplains, or in 113.6(2)“f,” pertaining to unstable areas, must close in accordance with rule 113.12(455B) and conduct postclosure activities in accordance with rule 113.13(455B).

b. Except as provided in paragraph 113.2(8)“c” below, existing MSWLF units that do not have an approved leachate collection system and a composite liner or an alternative liner modeled at an approved point of compliance shall cease accepting waste by October 1, 2007.

c. Existing MSWLF units that have an approved leachate collection system and a basal liner beneath the unit that is either a composite liner or an alternative liner modeled at an approved point of compliance, but that is not continuous onto the sides of the unit, may continue to place waste after October 1, 2007 in those portions of the unit directly underlain by the basal liner. Any new unit or lateral expansion of an existing unit shall be constructed with a leachate collection system and liner that meets the requirements of subrule 113.7(5) which is continuous beneath and onto the sides of the new unit or lateral expansion of an existing unit. Such units shall be brought into compliance in accordance with subrule 113.2(9) by constructing a leachate collection system and liner on the sides of the unit that meets the requirements of subrule 113.7(5) and is continuous beneath and onto the sides of the unit.

d. Those portions of existing MSWLF units demonstrating placement of final cover in conformance with previously approved plans and specifications or regulations in effect at the time of such closure shall not be required to apply additional cover solely to achieve compliance with rule 113.12(455B).

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Date

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Richard A. Leopold, Director

## Administrative Rule Fiscal Impact Statement

**Date: 4/17/08**

Agency: **Iowa Department of Natural Resources**

IAC Citation: **567-IAC Chapter 113.2(8)“c”**

Agency Contact: **Alex Moon at 515-281-6807**

### Summary of the Rule:

Both federal and state regulations require liners and leachate collections systems to be in place for waste disposal purposes at municipal solid waste landfills. The liner and leachate collection system must be beneath all areas where waste disposal occurs in order to contain potentially harmful liquids and gases from reaching the groundwater below.

Paragraph 113.2(8)“c” allows existing municipal solid waste landfill units that have an approved leachate collection system and a basal liner beneath the unit but not along the sides of the unit, to continue to place waste after October 1, 2007 in those portions of the unit directly underlaid by the basal liner. Such units shall be brought into compliance within the next three years (by January 31, 2008) by constructing a leachate collection system and liner on the sides of the unit that meet the requirements of subrule 113.7(5) and are continuous beneath and onto the sides of the unit.

This amendment to paragraph 113.2(8)“c” is being proposed to address public comments and an objection placed upon this subrule by the Administrative Rules Review Committee pursuant to Iowa Code section 17A.4(5) on December 11, 2007. The Administrative Rules Review Committee determined that subrule 113.2(8) is unreasonable and stated “These members are concerned that subrule 113.2(8) constitutes an improper regulatory taking.” The legal effect of this objection is to shift the burden of proof to the Department in any legal challenge to the subrule. Such legal challenge has been filed. The amendment is intended to allow municipal solid waste landfills to continue to use previously approved landfill cells which have a basal liner and leachate collection system until those cells have been filled.

The amendment is also intended to address question that have arisen in regard to the current closure requirements for sites that were closed pursuant to the previous rule requirements.

***Fill in this box if the impact meets these criteria:***

☒ **No Fiscal Impact to the State.**

☐ **Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.**

☐ **Fiscal Impact cannot be determined.**

**Brief Explanation:** The proposed rules will not significantly impact the Department's regulatory responsibilities nor will these rules have a significant impact on revenue collected by the Department through solid waste tonnage fees. If anything, the proposed rule change spreads out the number of facility design reviews by department engineering staff over an extended period of time.

***Fill in the form below if the impact does not fit the criteria above:***

☐ **Fiscal Impact of \$100,000 annually or \$500,000 over 5 years.**

**\* Fill in the rest of the Fiscal Impact Statement form.**

*Assumptions:*

*Describe how estimates were derived:*

**Estimated Impact to the State by Fiscal Year**

	<u>Year 1 (FY _____)</u>	<u>Year 2 (FY _____)</u>
Revenue by Each Source:		
<b>GENERAL FUND</b>		
<b>FEDERAL FUNDS</b>		
<b>Other (specify)</b>		
<b>TOTAL REVENUE</b>	_____	_____
Expenditures:		
<b>GENERAL FUND</b>		

**FEDERAL FUNDS****Other (specify)****TOTAL EXPENDITURES** \_\_\_\_\_**NET IMPACT**

  X   This rule is required by State law or Federal mandate.

*Please identify the state or federal law:*

40 Code of Federal Regulations (CFR) part 258 (commonly referred to as RCRA Subtitle D standards

       Funding has been provided for the rule change.

*Please identify the amount provided and the funding source:*

       Funding has not been provided for the rule.

*Please explain how the agency will pay for the rule change:*

*Fiscal impact to persons affected by the rule:*

The department's recent rulemaking effort for 567-Chapter 113, identified up to 19 municipal solid waste landfills in Iowa as being impacted by subrule 113.2(8)"c". The revision will benefit most if not all of the 19 affected landfill agencies. The current rule requires construction of a liner along the unlined sideslope of landfills during the next 3 year time period ending January 31, 2011. This must occur whether disposal capacity remains or not. There is a monetary cost associated with such construction. The proposed revision postpones the construction until those disposal areas have reached their final capacity. This allows more time to accrue funds for the construction of a sideslope liner or if the landfill chooses not to expand and instead stop accepting waste, the cost for construction is avoided all together.

In some cases, the rule revision delays the construction of a sideslope liner on top of areas where waste liquids could reach groundwater. The delay could increase the extent and magnitude of potential groundwater contamination if waste liquids reached the groundwater beneath. The U.S. EPA has indicated that approximately 20 percent of the approximately 1,100 sites on the National Priorities List (NPL), the national list of Superfund sites, are municipal landfills and that approximately 25 percent of all NPL sites appear to have received MSW. According to EPA, the average cost of cleaning up a single Superfund site is currently about \$25-30 million (<http://library.findlaw.com/1999/Nov/1/130490.html>). Using the EPA's average dollar amount for cleanup at a Superfund site of \$30 million, a dollar amount for future groundwater cleanup at the 19 Iowa landfills could be as much as \$475 million dollars. Having the sideslope liner constructed and in place sooner could mitigate the extent of the clean up if groundwater contamination did occur.

*Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):*

All but four of the 19 municipal solid waste landfills identified as being impacted by the paragraph 113.2(8)“c” are publicly owned by cities, counties, or associations of local governments. Therefore, any fiscal impacts, positive or negative will be primarily born by these entities. Such impacts are described above.

**\* If additional explanation is needed, please attach extra pages.**

**Agency Representative preparing estimate: Alex Moon**  
**Telephone Number: 515-281-6807**